

Police Prosecutor Update

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We will again look at a recent case dealing with a canine sniff of a vehicle in a traffic stop situation.

During the early morning hours, a police officer noticed the defendant, Wilson, in a parked car in a CVS parking lot. The defendant and a passenger were watching the patrol car. The defendant drove to a Gas America parking lot, and the officer noticed the defendant watching him as the defendant cleaned his windshield. The officer continued his patrol. About twenty minutes later, he returned to the Gas America station, where the defendant and his companion were still parked. The officer again noticed the defendant and his companion watching him.

The officer drove to a nearby parking lot and turned out his headlights so he could watch the defendant's car. The defendant drove out of the Gas America lot and accelerated very quickly to a high rate of speed. The defendant's license plate light was out, so the officer stopped the defendant's car. During the traffic stop, the defendant was "very nervous." His "hands were shaking" and he was "having trouble getting his license and vehicle registration." The officer noted that the defendant paused often when speaking.

After obtaining the defendant's license and registration, the officer returned to his car to run license and warrant checks and to write warning tickets for the license plate light and for speeding. The checks were returned at 1:58 a.m. The time indicated on the warning tickets was 2:06 a.m. The officer then asked Wilson to step from his car. The officer asked if there were any weapons or illegal drugs in the car, and the defendant replied no. The officer then asked if the defendant had any weapons on him, and Wilson said he had a knife. The officer patted down the defendant, and the defendant said he had \$4,000.00 in cash in his pocket. The officer then asked if he could search the car but the defendant refused. At that point, at 2:15 a.m., the officer called for backup and a unit with a drug-sniffing dog. The dog arrived shortly thereafter as the officer gave the defendant the warning tickets. The dog alerted on two areas of the car., and officers found narcotics and a gun.

The U.S. Supreme Court has held that "a dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment." But the court cautioned that "a seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."

Our court of appeals stated that while a dog sniff is not a search, on the completion of a traffic stop an officer must have reasonable suspicion of criminal activity in order to proceed thereafter with an investigatory detention. The *critical facts* in determining whether a vehicle was legally detained at the time of the canine sweep are whether the traffic stop was concluded and, if so, whether there was reasonable suspicion at that point to continue to detain the vehicle for investigatory purposes.

The court of appeals in this case said the defendant's car was unlawfully detained at the time of the dog sniff. The time of the warning tickets was 2:06 a.m., and the officer didn't call for the dog until 2:15 a.m. – after the defendant refused to allow a search of the car. As the court said, as the tickets were written some time before the dog arrived, it was apparent that the officer could have completed the traffic stop sooner than he did.

And there was no reasonable suspicion. In the court's view, a person's nervousness when stopped by the police at 2:00 a.m. is understandable, as is watching a passing patrol car. And carrying \$4,000.00 in cash is unusual, but it is not illegal.

Case: *Wilson v. State*, 847 N.E.2d 1064 (Ind. Ct. App. 2006).